



# **FREDERICK COUNTY PLANNING COMMISSION**

## **January 11, 2017**

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**TITLE:**

**Harding Farm Lot 2D**

**FILE NUMBER:**

**S-538, AP #16795 (APFO #16808, FRO #16809)**

**REQUEST:**

**Combined Preliminary/Final Subdivision and APFO Approval**

The Applicant is requesting major subdivision approval to subdivide the existing 1.50 acre Lot 2D into two (2) new lots. Lot 2DA lot will be .916 acres and Lot 2DB will be .584 acres.

**PROJECT INFORMATION:**

**ADDRESS/LOCATION:** 5617 Spectrum Drive; located north of Holiday Drive, between Spectrum Drive and MD 355.

**TAX MAP/PARCEL:** Tax Map 77, Parcel 187, Lot 2D

**COMP. PLAN:** Mixed Use Development (MX)

**ZONING:** General Commercial (GC)

**PLANNING REGION:** Frederick

**WATER/SEWER:** W-1/S-1

**APPLICANT/REPRESENTATIVES:**

**APPLICANT:** Visconsi Companies

**OWNER:** Frederick Realty, LLC

**ENGINEER:** Harris, Smariga & Associates, Inc.

**ARCHITECT:** N/A

**ATTORNEY:** N/A

**STAFF:**

Tolson DeSa, Principal Planner II

**RECOMMENDATION:** Conditional Approval

**ATTACHMENTS:**

Exhibit 1-Combined Prelim/Final Subdivision Rendering: Lots 2DA & 2DB  
Exhibit 2- Harding Farm Section 5, Lots 2DA & Letter of Understanding (LOU)



## BACKGROUND

### Development History

The FSK Mall was constructed in 1974; the portion of the site where the proposed jewelry store will be located was undeveloped until 1998, when the 5,924 square foot Double T Diner was constructed. The proposed jewelry store will be located on the lot that is the subject of a Combined Preliminary/Final Plat (AP #16795) to create a .916 acre Lot 2DA, Section 5 of Harding Farm from the 1.50-acre Lot 2D (See Graphic #2), the remaining .584-acre portion will be known as Lot 2DB and will be developed with a 1,850 square foot restaurant.

Graphic #2: Harding Farm Lot 2D Aerial

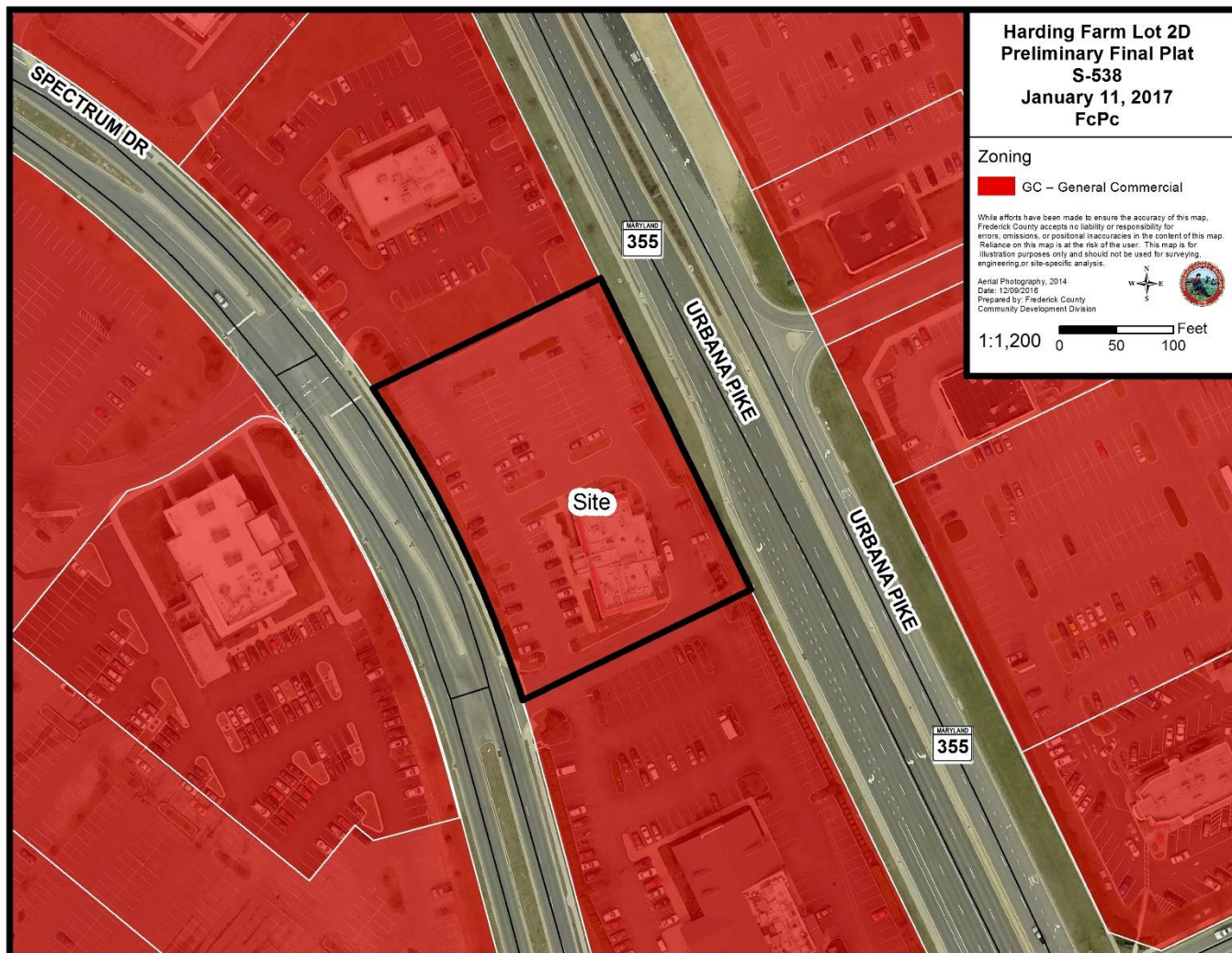




### Existing Site Characteristics

The site is currently zoned General Commercial (GC), and is developed with the Double T Diner restaurant and associated parking, see Graphic #3 below. Properties to the north, south, east, and west are all zoned GC. The properties to the north and south are developed with existing restaurants. The property to the west of the site is developed with the FSK Mall, and 3,600 parking spaces. MD 355 is located along the eastern property boundary.

Graphic #3: Harding Farm Lot 2D Zoning Map





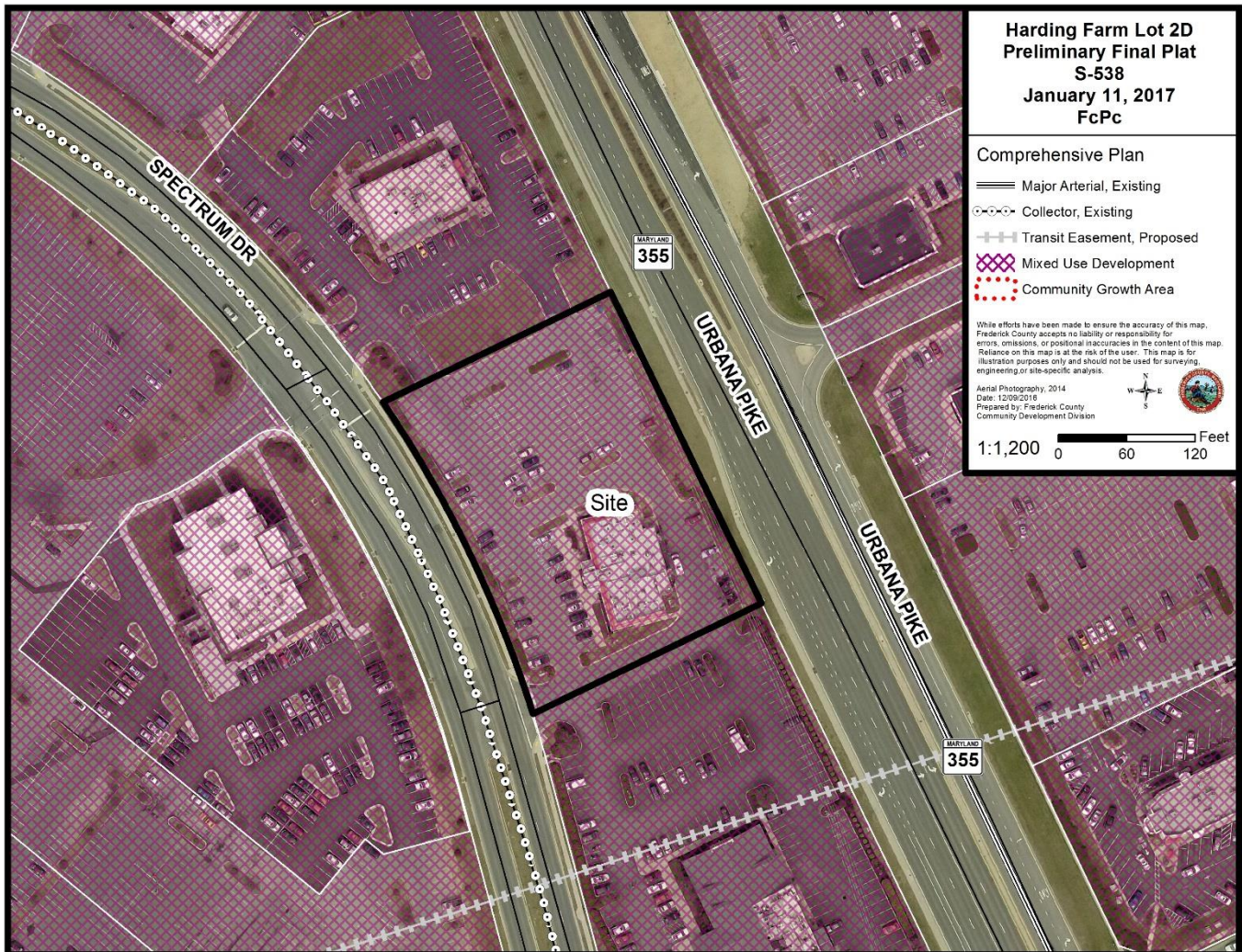
## ANALYSIS

### A. LAND, DIMENSIONAL, AND BULK STANDARDS

1. **Land Requirements §1-16-217 (A):** *The land use pattern of the Comprehensive Plan and the district regulations of the zoning ordinance shall form the basic theme of the design pattern of the proposed subdivision.*

The General Commercial zoning district and Mixed Use Development land use designation are intended to provide general retail commercial and business services, (see Graphic #4 below). The existing mall and the design pattern of the proposed subdivision meet the requirements for this district and comply with the intent of the land use designation.

Graphic #4: Harding Farm Lot 2D Comprehensive Plan Map



2. **Land Requirements §1-16-217 (B):** *The subdivision design shall take advantage of the uniqueness of the site reflected by topography, soils, the wooded areas, water bodies and the relationship to adjoining subdivisions and land uses, both proposed and existing.*

The existing site is currently developed with the 5,924 square foot Double T Diner restaurant and parking area and therefore does not include unique topography, soils, wooded areas or water bodies. However, the proposed subdivision design is consistent with the existing mall and established development pattern in the vicinity of the subject property.

**3. Dimensional Requirements/Bulk Standards §1-19-6.100:** Section 1-19-6.100 of the Zoning Ordinance stipulates the setback requirements and the minimum lot area for the proposed use. The setback requirements for a 'commercial use' within the GC zoning district are 25-foot front yard, 25-foot rear yard, with 8' side yards. The minimum lot size for the zoning district is 12,000 square feet. The proposed lot sizes are .9163 acres for Lot 2DA and .584 acres for Lot 2DB. The lot dimensions provide ample area for development of a typical commercial use with associated parking. The proposed plan meets the required Bulk/Dimensional requirements for the General Commercial zoning district.

**4. Floodplain District Regulations (§1-19-9.110) and Waterbody Buffer Requirements (§1-19-9.400):** *A minimum setback of 25 feet shall be provided from all Floodplain district boundaries. No new development shall be permitted in areas of flooding soils. Waterbody buffer width shall be derived by calculating the gradient of the slope within a 175 foot cross section. The minimum waterbody buffer shall be 100 feet.*

The proposed lot is located within the boundaries of an existing developed area and therefore does not contain any restricted or sensitive soils, or sensitive environmental features. The site is not located within the FEMA floodplain. The proposed subdivision meets the requirements of §1-19-9.110 and §1-19-9.400.

#### **Land, Dimensional, and Bulk Standards Findings/Conclusions**

The proposed subdivision meets all land, dimensional, and bulk standards.

#### **B. ACCESS**

**1. Public Facilities §1-16-12 (B)(3)(b):** *For major subdivisions; Lots must access a publicly-maintained road with a continuously paved surface that is at least 20 feet in width.*

The Applicant proposes to use the existing common access points running north and south between the Golden Corral, Double T Diner, and Appleby's sites off of Spectrum Drive to serve Lot 2DA and Lot 2DB. Spectrum Drive is an existing 4 lane divided collector street as identified on the County Comprehensive Plan. Spectrum Drive meets the minimum 20 foot width requirement to serve major subdivisions.

**2. Lot Access to Streets §1-16-240:** *(A) The Planning Commission shall have the right to approve or disapprove any point of ingress and egress to any lot... (B) The Planning Commission may require the subdivider to provide ingress and egress to a particular lot or tract through the remainder of the property...*

The Applicant proposes to use the existing approved common access points running north and south between the Golden Corral, Double T Diner, and Appleby's entrances off of Spectrum Drive to serve Lot 2DA and Lot 2DB. No additional improvements to these access points are proposed or required as part of this subdivision plan

**3. Driveway Entrance Spacing Policy:** *This policy, adopted by the FcPc in 2002 and amended in 2004, provides a system of evaluating driveway locations for public safety, to preserve the rural character of roads located in the rural parts of the County, and allowing tighter spacing in areas of the County designated for denser development.*

This Application is not subject to the entrance spacing criteria because no new driveway entrances are proposed.

#### **Access Findings/Conclusions**

The proposed lot will meet all County access requirements.

## **C. WATER AND SEWER FACILITIES**

- 1. Public Facilities §1-16-12 (C):** *The proposed subdivision shall be disapproved unless each building lot has been approved for individual and/or community sewerage and water facilities by the Health Department.*

The site is to be served by public water and sewer and is classified W-1, S-1. The entire site is in pressure Zone #1 with water coming from New Design WTP and Sewer flowing into the Ballenger McKinney WWTP. While the public sewer and water facilities are currently adequate to serve the Project, the Applicant acknowledges that capacity is not guaranteed until purchased.

## **D. OTHER APPLICABLE REGULATIONS**

**Stormwater Management – Chapter 1-15.2:** Storm water management (SWM) shall be provided in accordance with the redevelopment section of the 2007 Maryland Storm water Design Manual, including all revisions and all supplements. A SWM concept plan (AP #16927) was approved for this project on November 15, 2016. A SWM development plan will be submitted and approved, prior to final site plan approval. A final SWM plan will be provided with the Improvement Plans.

### ***Adequate Public Facilities Ordinance (APFO) – Chapter 1-20:***

- 1. Schools.** Schools are not impacted because the proposed development is a non-residential use.
- 2. Public Water/Sewer.** While the public sewer and water facilities are currently adequate to serve the project, the Developer recognizes that capacity is not guaranteed until purchased. APFO approval for sewer and water does not guarantee that plats will be recorded or that building permits will be issued. Plat recordation and building permit issuance are subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et seq. and all applicable County regulations, including but not limited to Sec. 1-16-106 of the Frederick County Subdivision Regulations.
- 3. Roads.** Based on ITE trip generation rates, the proposed development of this site would result in 88 AM and 76 PM driveway trips during the peak hour of adjacent street traffic. The APFO Letter of Understanding (AP#16808) sets forth the Developer's obligation associated with the proposed development; any future modification to the development which would have the effect of increasing the projected trip generation would be subject to new analysis under APFO to the extent of the increase in projected trips.

In full satisfaction of APFO requirements per §1-20-31 and §1-20-12(H), the Developer is required to provide fair share contributions to existing escrow accounts that are impacted by the proposed development of the site. The Developer shall pay into County-held escrow accounts the following pro rata contributions:

- No. 3976: MD 85 / Guilford Drive: Construction of second northbound left-turn lane and westbound receiving lane. The estimated cost of this Improvement is \$439,527. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 0.76%. Therefore, the Developer hereby agrees to pay \$3,340 to the escrow account for this Road Improvement.
- No. 4025: MD 85 / Spectrum Drive: Construction of additional southbound through lane. The estimated cost of right-of-way and construction for this improvement is \$1,474,010. The Developer's proportionate share of this Road Improvement is 0.34%.

Therefore the Developer hereby agrees to pay \$5,012 to the escrow account for this Road Improvement.

**Therefore, prior to recordation of the final plat, the Applicant hereby agrees to pay \$8,352 to the escrow accounts for these Road Improvements.** Should these payments not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering cost index.

The APFO approval is valid for three (3) years from the date of Commission approval; therefore, the APFO approval expires on January 11, 2020.

**Forest Resource Ordinance – Chapter 1-21:** The Applicant has submitted a Combined Preliminary/Final Forest Conservation Plan, which has been approved by Staff. The site contain no forest or specimen trees but does generate an afforestation requirement of 0.23 acres. This mitigation requirement will be met by paying fee-in-lieu. Based on the current fee-in-lieu rate the payment owed is \$4,308.08. Payment is based on the fee-in-lieu rate in place at the time payment is made. The FRO mitigation must be provided prior to applying for grading permits, building permits, or lot recordation, whichever is applied for first.

### Summary of Agency Comments

<b><i>Other Agency or Ordinance Requirements</i></b>	<b><i>Comment</i></b>
<b><i>Development Review Engineering (DRE):</i></b>	Conditional Approval
<b><i>Development Review Planning:</i></b>	Hold: Address all agency comments as the plat proceeds to completion.
<b><i>State Highway Administration (SHA):</i></b>	N/A
<b><i>Div. of Utilities and Solid Waste Mngt. (DUSWM):</i></b>	Conditional Approval
<b><i>Health Dept.</i></b>	Approved
<b><i>Office of Life Safety</i></b>	N/A
<b><i>DPDR Traffic Engineering</i></b>	Approved
<b><i>Historic Preservation</i></b>	N/A

### **RECOMMENDATION**

Staff has no objection to conditional approval of the proposed combined Preliminary/Final Subdivision. Per 1-16-8(G) of the Subdivision Regulations, Combined Preliminary/Final Plat approval is valid for 5 years from application or the period of APFO approval. Therefore, if approved, the Combined Prelim/Final Plat approval will be valid until January 11, 2020. If the Planning Commission conditionally approves the subdivision and APFO, the APFO approval will be valid for a period of three (3) years from the date of Planning Commission approval or January 11, 2020.

Based upon the findings and conclusions as presented in the staff report the application meets or will meet all applicable zoning, APFO, and FRO requirements once the following conditions are met:

1. Address all agency comments as the plan proceeds through to completion.



**Prior to final plat recordation all of the following must be completed:**

1. All necessary water and/or sewer easements shall be submitted, approved and recorded, and the Liber / Folio numbers shown on the plat.
2. The required W/S facilities must be under contract and be within 90 days of completion/operation before DUSWM can certify recordation of plats. Work must be commenced, i.e., NTP issued and noticeable work completed. Staff notes that an 89 day construction contract will not certify plat recordation.
3. The FRO mitigation must be provided prior to applying for grading permits, building permits, or lot recordation, whichever is applied for first.
4. Complete the requirements of the Harding Farm Section 5, Lots 2DA and 2DB Letter of Understanding.

**PLANNING COMMISSION ACTION**

**MOTION TO APPROVE AS MODIFIED**

I move that the Planning Commission **APPROVE** S-538 AP #16795, including APFO approval, **with conditions** as listed in the staff report for the proposed Harding Farm Lot 2D Combined Preliminary/Final Subdivision, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.





**FREDERICK COUNTY GOVERNMENT**  
**DIVISION OF PLANNING & PERMITTING**

Jan H. Gardner  
*County Executive*

Steven C. Horn, *Division Director*

**ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING**

**Harding Farm Section 5, Lots 2DA and 2DB**

*Preliminary / Final Plat #S-538, AP #16808*

**In General:** The following Letter of Understanding ("Letter") between the Frederick County Planning Commission ("Commission") and VMD – Frederick, LLC (the "Developer"), together with its/their successors and assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements dealing with water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed under the Harding Farm Section 5, Lots 2DA and 2DB Combined Preliminary / Final Plat (the "Project"), in compliance with the Frederick County Adequate Public Facilities Ordinance ("APFO").

The Developer, its successors and assigns, hereby agrees and understands that unless the required improvements and contributions to road escrow accounts, as specified below are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter concerns itself with the Developer's approximately 1.50 acre parcel which is zoned GC (General Commercial), and located on the west side of Urbana Pike (MD 355) and east of Spectrum Drive. This APFO approval will be for the development of a 4,245 SF building for retail use and a 1,850 SF building for fast food restaurant use.

**Schools:** Schools are not impacted because the development of the property is a non-residential use.

**Water and Sewer:** While the public sewer and water facilities are currently adequate to serve the project, the Developer recognizes that capacity is not guaranteed until purchased. APFO approval for sewer and water does not guarantee that plats will be recorded or that building permits will be issued. Plat recordation and building permit issuance are subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et. seq and all applicable County regulations, including but not limited to Sec. 1-16-106 of the Frederick County Subdivision Regulations.

**Road Improvements:** Based on ITE trip generation rates, the proposed development of this site would result in 88 AM and 76 PM driveway trips during the peak hour of adjacent street traffic. This Letter sets forth the Developer's obligation associated with the proposed development; any future modification to the development which would have the effect of increasing the projected trip generation would be subject to new analysis under APFO to the extent of the increase in projected trips.

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Therefore, prior to this issuance of a building permit, the Developer hereby agrees to pay **\$8,352** to the escrow accounts for these Road Improvements. Should these payments not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering cost index.

**Period of Validity:** The APFO approval is valid for three (3) years from the date of Commission approval; therefore, the APFO approval expires on January 11, 2020.

**Disclaimer:** This Letter pertains to APFO approval only, and shall not be construed to provide any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The Planning Commission's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

[Signatures next page]

**VMD – Frederick, LLC:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Dominic A. Visconsi, Jr., Manager

**FREDERICK COUNTY PLANNING COMMISSION:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
William Hopwood, Chair or Robert White, Secretary

**ATTEST:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Gary Hessong, Director, Permits & Inspections

*Planner's Initials / Date* \_\_\_\_\_  
*(Approved for technical content)*

*County Attorney's Office Initials / Date* \_\_\_\_\_  
*(Approved as to legal form)*